



W.P.No.16765 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.16765 of 2022 and
WMP.Nos.16074, 16075 & 17869 of 2022

D.Sagaya Mary

... Petitioner

Vs.

- 1.The District Educational Officer(Audit),
Cuddalore Educational District,
Cuddalore District
- 2.The District Educational Officer,
Vadalur Educational District,
Cuddalore District
- 3.The Block Educational Officer,
Kurinjipadi Block,
Cuddalore District 670 302
- 4.The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006

(R4 impleaded vide order dated 18.07.2022
made in WMP.No.17485 of 2022 in
WP.No.16765 of 2022)

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned proceedings issued by the third respondent in Na.Ka.No.803/A1/2020 dated 26.04.2022 and to quash the same and consequently directing the respondents to allow the petitioner



W.P.No.16765 of 2022

to draw salary based on the fixation of Selection Grade in the post of Primary School Headmaster with effect from 28.11.2006, with all consequential and other attendant benefits.

For Petitioner : Mr.G.Sankaran,
Senior Counsel
for Mr.S.Nedunchezhiyan

For Respondents : Mrs.S.Mythereye Chandru,
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the third respondent dated 26.04.2022 thereby cancelled the pay fixation and revised the petitioner's pay fixation and also ordered recovery to the tune of Rs.13,85,863/-.

2. The petitioner was selected and appointed in the post of Secondary Grade Teacher in Elementary School Education on 29.08.1986. Subsequently, her service was regularised and she also successfully completed her probationary period. After completion of 10 years of her service on 01.08.1995, she was granted Selection Grade in



W.P.No.16765 of 2022

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the post of Secondary Grade Teacher. Thereafter, on completion of 10 years of service in the Selection Grade Secondary Grade Teacher post, she was also granted Special Grade with effect from 14.08.2005. Based on the VI Pay Commission recommendations, the Government passed order in GO.Ms.No.234 Finance Department dated 01.06.2009 for revision of pay of Government servants with effect from 01.01.2006. In the meanwhile, on the basis of seniority and eligibility, the petitioner was promoted to the post of Primary School Headmaster with effect from 28.11.2006. As per the Government orders, a teacher reached Special Grade in the post of Secondary Grade Teacher prior to 01.06.2009 called to exercise option for fixation of pre-revised pay, in order to avail Selection Grade in the promoted post of Primary School Headmaster. Accordingly, the petitioner had exercised her option for fixation of pre-revised scale of pay. Accordingly, she was paid with salary with fixation of revised scale of pay as Selection Grade Primary School Headmaster with effect from 28.11.2006. While being so, she was issued notice on the basis of audit objection with regard to Selection Grade granted to the petitioner.



W.P.No.16765 of 2022

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2.1 On receipt of the same, the petitioner submitted representation on 02.12.2021. Thereafter, the third respondent passed order stating that there is audit objection for fixation of pay in Selection Grade in the post of Primary School Headmaster with effect from 28.11.2006 and accordingly, the same is cancelled. Further, she was directed to remit the amount of excess salary from 28.11.2006 to 31.03.2022.

3. The second respondent filed counter stating that the petitioner is not entitled for Selection Grade in the post of Primary School Headmaster on the date of joining itself i.e. 28.11.2006. Since the service in the feeder post was already taken into account for granting Selection Grade and Special Court in the feeder post and as such, the question of reckoning the same period does not arise. Therefore, the petitioner is not entitled for fixation of pay in the time scale applicable to Primary School Headmaster as on 28.11.2006.



W.P.No.16765 of 2022

WEB COPY

4. Heard, the learned counsel appearing on either side.

5. It is seen that the grant of Selection Grade in the post of Primary School Headmaster was granted to the petitioner based on the option exercised by the petitioner as per the Government Orders for fixation of pay in the pre-revised scale of pay from 01.01.2006 to 05.03.2009. Therefore, the petitioner is entitled for grant of Selection Grade in the post of Primary School Headmaster in accordance with the Government Orders.

6. Without considering the above, in view of the audit objection, the impugned order has been passed. That apart, the order of recovery is made after period of five years. The Hon'ble Supreme Court of India in the case of *State of Punjab Vs. Rafiq Masih (White Washer)* reported in *(2015) 4 SCC 334* held that recovery of any excess payment for the mistake of the department after overlooking period of five years cannot be made. In the present case, the respondents have sought to make recovery from 28.11.2006 to 31.03.2022. Therefore, it is impermissible under law. Further, the petitioner by her representation dated 02.12.2021,



W.P.No.16765 of 2022

sought for further time to submit her explanation and to settle the audit.

However, she was not given opportunity to submit her explanation for audit objection and as such, it is also violation of principles of natural justice.

7. In view of the above, for all the foregoing observations, the impugned order is liable to be quashed. Accordingly, the impugned order of the third respondent dated 26.04.2022 is quashed and this writ petition is allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

14.02.2024

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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W.P.No.16765 of 2022

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W.P.No.16765 of 2022

G.K.ILANTHIRAIYAN, J.

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W.P.No.16765 of 2022



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W.P.No.16765 of 2022

14.02.2024